Center for Immigration Studies

Backgrounder

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# The Enhanced Border Security and Visa Entry Reform Act of 2002

## A Summary of H.R. 3525

By Rosemary Jenks

Approximately eight months after the terrorist attacks of September 11, on May 14, 2002, President George W. Bush signed the Enhanced Border Security and Visa Entry Reform Act of 2002. This new law, enacted by an overwhelming, bipartisan majority in both Houses of Congress, originally was drafted and sponsored by Senators Dianne Feinstein (D-CA), Jon Kyl (R-AZ), Edward Kennedy (D-MA) and Sam Brownback (R-KS), and Representatives James Sensenbrenner (R-WI) and George Gekas (R-PA). It represents the most comprehensive immigration-related response to the continuing terrorist threat America faces.

The Border Security law contains several provisions that are critical to our ability to control our borders. Among the most important are:

- A requirement that the Immigration and Naturalization Service (INS) make interoperable all its internal databases, so that all information about a particular alien may be accessed with a single search;
- A requirement that federal law enforcement and intelligence agencies share data on aliens with the INS and the State Department; and
- A requirement that all travel and entry documents, including visas, issued to aliens by the United States be machine-readable and tamper-resistant and include a standard biometric identifier.

H.R. 3525 is not a panacea, but it is a tough, common-sense law that sends the right message: The United States must regain control over our borders and our ports of entry, and we expect our border control agencies to carry out their duty to protect our nation and our citizens from those who seek to exploit our generosity. Ironically, President Bush himself tried unsuccessfully to dilute this message by forcing Congress to attach a de facto amnesty to the measure.

The Administration's attempts to re-enact Section 245(i) of the Immigration and Nationality Act are, in part, why it took Congress so many months to pass this new law. Initially resisting pressure from the White House to add re-enactment of Section 245(i) to H.R. 3525, the House of Representatives first passed the bill by voice vote on December 19, 2001. It was held up in the Senate by Sen. Robert Byrd (D-WV), who insisted that the bill come to the Senate Floor for a full debate and amendment, rather than being passed with no debate by Unanimous Consent. In March of this year, the administration convinced House Republican leaders to attach a temporary re-enactment of Section 245(i) to the Border Security bill, call it H.Res. 365, and bring it to the House floor on the Suspension Calendar, which requires a two-thirds vote for passage. H.Res. 365 passed the House on March 12 by a margin of one vote. Had White House lobbyists not been on the House floor cajoling Republicans to vote for the measure, it is unlikely that it would have passed.

When H.Res. 365 was sent to the Senate for consideration, Sen. Byrd was joined by Sen. Bob Smith (R-NH) in opposing any Unanimous Consent agreement. Finally, an agreement was reached in the Senate to bring the clean H.R. 3525 [i.e., without Section 245(i)] to the floor for debate and a vote. The measure passed the Senate by 97-0 on April 18. On May 8, the House agreed to the bill, as amended by the Senate, by a vote of 411-0. A detailed summary of the new law follows. The complete text of the law is available on line at http://thomas.loc.gov/cgi-bin/query/z?c107:H.R.3525.ENR:

## Title I – Funding

**Personnel**

Section 101 authorizes funding for 800 new Immigration and Naturalization Service (INS) inspections personnel and 800 new INS investigations personnel between 2003 and 2006. It upgrades the basic pay for

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Border Patrol Agents from GS-9 to GS-11 level and for INS Inspectors from GS-5 to GS-7 level. It authorizes funding for training of INS personnel and for cross-training for other agencies staffing U.S. borders and ports of entry. It approves additional funding for the expansion of the Carrier Consultant Program, which stations INS personnel at foreign airports to assist air carriers in the detection of fraudulent travel or immigration documents. Finally, it authorizes additional funding for new State Department consular personnel and for their ongoing training.

**Technology**
Section 102 authorizes a $150 million appropriation to the INS to improve its technological capabilities so as to improve border security and facilitate the flow of commerce and cross-border traffic. It also authorizes the INS and State to improve and expand their facilities.

**Visa Fees**
Section 103 sets the fee to be charged for issuance of a machine-readable visa at the higher of $65 or the actual cost of the service. It also authorizes State to charge a $10 surcharge for issuing a machine-readable visa in a nonmachine-readable passport. The fees are to be used to cover the costs of consular services.

## Title II – Interagency Information Sharing

**Interim Data-Sharing System**
Section 201 creates an interim program under which federal law enforcement and intelligence agencies are to share with the INS and State any information that is relevant to the admissibility and deportability of aliens. It requires President Bush to report to Congress by mid-September on which law enforcement and intelligence information is needed by the INS and State to screen visa applicants and applicants for admission to the United States. The President, in consultation with Congress, is required to develop and implement a system, by October 26, 2002, to provide INS and State with access to such information.

This provision also restricts the use of the information in the system so as to protect privacy, and it creates criminal penalties for the misuse of the information. Finally, it advances from October 2003 to January 2003 the deadline by which the Attorney General (AG) and the Secretary of State must develop and certify a technology standard to verify the identity of non-citizens seeking entry into the United States, and it requires the first progress report on the use of the technology standard to be submitted to Congress by October 2002, rather than the April 2003 deadline included in the PATRIOT Act.

**The Chimera System**
Section 202 requires the INS to fully integrate all internal databases that contain information on aliens and to make the integrated data system fully interoperable with the Chimera system (described below). Once the system to share law enforcement information with the INS and State (as described in the above paragraph) is implemented, the President is required to begin implementation of an interoperable electronic data system, known as the Chimera system, that will provide the INS and State with real-time access to law enforcement and intelligence information concerning aliens.

This section requires the Chimera system to incorporate the technology standard the AG and the Secretary of State are required to develop (Sec. 201), and it requires that the technology standard include appropriate biometric identifier standards. It specifies that consular officers responsible for visa issuance, federal officials responsible for determining the admissibility or deportability of aliens, and federal law enforcement or intelligence officers responsible for investigating or identifying aliens all must have ready access to the Chimera system, but requires the President to establish procedures to restrict other access to the system.

The Chimera system must incorporate linguistically sensitive algorithms that can account for variations in name formats, spelling and other name elements within a particular language. The Secretary of State is responsible for designating at least four languages for which such algorithms must be developed and for implementing those four by November 2006. The President is required to report to Congress every six months, beginning in November 2002, on the progress made in implementing Chimera.

Section 203 provides for the establishment, by October 26, 2002, of a nine-member, bipartisan commission to provide oversight of the development of the Chimera system and to monitor the protections against unauthorized use of the system

Section 204 authorizes the AG to waive employee classification, pay and performance standards in hiring and setting the pay for any scientific, technical, engineering or analytical personnel necessary for the development of Chimera. The AG must present Congress with an operating plan by this August on how he intends to use this authority, which terminates upon implementation of the system.

## Title III – Visa Issuance

**Electronic Visa Files**
Section 301 requires the State Department to provide the INS with an electronic version of the visa file of each alien issued a visa, so that the file is available to immigration inspectors at U.S. ports of entry prior to an alien's arrival.



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**Entry-Exit System**
Section 302 requires that the integrated entry and exit system, originally enacted in 1996, incorporate the technology standard required in Title II above. It requires the AG to establish a database with the arrival and departure data from machine-readable travel and entry documents issued to aliens and to make interoperable all security databases relevant to making admissibility determinations. It requires the INS and State, in implementing the entry and exit system, to utilize technologies that facilitate lawful cross-border traffic without compromising the safety and security of the United States, and to consider implementing the North American National Security Program described in Section 401 below.

**Biometric Travel Documents**
Section 303 requires the AG, the Secretary of State and the National Institute of Standards and Technology jointly to submit a report to Congress by mid-November 2002 detailing the actions and resources that will be needed to fully implement the provisions of this section by no later than October 26, 2004. It requires that all travel and entry documents issued by the United States to aliens be machine readable and tamper resistant and include biometric identifiers by October 26, 2004. It requires the AG to install machine readers and scanners at all U.S. ports of entry by this date so as to allow biometric comparison and authentication of all U.S. travel and entry documents and of all passports issued by visa waiver countries. Finally, this section requires that, in order to permit a foreign country to participate in the visa waiver program after October 26, 2004, the INS must certify that the country's government issues its nationals machine-readable, tamper-resistant passports that include standard biometric identifiers.

**Terrorist Lookout Committees**
Section 304 requires the Secretary of State to ensure that a terrorist lookout committee is maintained at each U.S. mission to a foreign country. These committees are to use the resources at their disposal to identify known or potential terrorists, to disseminate information on such individuals to the appropriate federal authority for use in administering U.S. immigration laws, and to ensure that the names of known and suspected terrorists are entered into the appropriate lookout databases. Each committee is required to submit a monthly report to the Secretary of State detailing the committee's activities. The Secretary, then, is required to report to Congress quarterly on the status of the committees.

Section 305 requires the Secretary of State to ensure that all consular officers responsible for adjudicating visa applications are given special training in the effective screening of visa applicants who pose a potential threat to the safety or security of the U.S. The Secretary also is required to coordinate with the Office of Homeland Security, federal law enforcement agencies, and the intelligence community so that unclassified law enforcement and intelligence information on terrorists and terrorism is disseminated to consular officers.

**Bar on Nonimmigrants from State Terror Sponsors**
Section 306 prohibits the issuance of any nonimmigrant visa to any alien from a country that is a state sponsor of terrorism (as designated by the State Department) unless the Secretary of State determines that such alien poses no threat to the safety or security of the United States.

**Tracking Passport Theft**
Section 307 requires countries that participate in the visa waiver program to certify that they report to the U.S. government, in a timely manner, the theft of blank passports issued by that country. It requires the AG to submit to Congress at least every two years (rather than every five years, as was the case) an evaluation of the effect of each visa waiver participant country on the law enforcement and security interests of the United States and a recommendation as to whether each country's participation should be continued. Finally, this section requires that, prior to the admission of any visa waiver alien, the INS must determine that the alien does not appear in any of the relevant lookout databases.

Section 308 requires the AG, within 72 hours of notification of the loss or theft of a U.S. or foreign passport, to enter the identification number of such passport into the Chimera system. To the extent practicable, the AG also is required to enter into Chimera the identification numbers of passports previously reported lost or stolen. Until Chimera is fully implemented, the AG is required to enter data on lost or stolen passports into an existing data system used to determine the admissibility or deportability of aliens.

**Identifying Refugees and Asylees**
Section 309 requires the AG to ensure that aliens admitted to the U.S. as refugees and aliens granted asylum after November 2002 are issued employment authorization documents that contain the fingerprint and photograph of the refugee or asylee.

## Title IV – Inspection and Admission of Aliens

Section 401 directs the President to report to Congress by May 14, 2003, the feasibility of establishing a North American National Security Program to enhance the mutual security and safety of the United States, Canada, and Mexico.



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It requires the President to examine, in particular:

1) the feasibility of establishing a program under which foreign nationals traveling to the United States, Mexico, or Canada could submit to a voluntary preclearance procedure to determine their admissibility before they arrive in North America;

2) the feasibility of expanding the current preinspection program to include foreign nationals on air flights to Mexico and Canada; and

3) the feasibility of cross-training and funding inspectors from Mexico and Canada to participate in the preinspection program.

**Passenger Manifests**
Section 402 requires that all commercial vessels and aircraft that transport people to any U.S. seaport or airport from outside the United States submit, prior to arrival, to a border officer at that port an arrival manifest that contains information on each passenger, crew member, or other person being transported. It requires advance submission of a departure manifest of all passengers and crew departing a U.S. seaport or airport on a commercial vessel or aircraft bound for a destination outside the United States.

This section requires that all arrival and departure manifests be transmitted electronically to border officers by no later than January 1, 2003. No carrier that is required to submit manifest information may be granted clearance papers until the proper manifests have been submitted, except that the AG may permit commercial vessels or aircraft that make frequent trips to the U.S. to submit departure manifest information after departing the U.S. The penalty for carriers that violate this section is a fine of $1,000 for each person with respect to whom full and accurate manifest information is not provided. No commercial vessel or airline may be granted clearance to enter the U.S. until any penalties levied on the carrier have been paid. Finally, this section requires the President to study the feasibility of expanding the passenger manifest requirements to commercial carriers that transport people by land to or from the United States and to report his findings to Congress by May 14, 2004. These provisions take effect upon enactment.

**Inspection Time Limit**
Section 403 repeals the provision of law that requires inspections at airports to be completed within 45 minutes from the time the passenger presents himself for inspection. However, this section also directs the INS to staff ports of entry at such levels as would be adequate to meet the goal of completing inspections within 45 minutes of a passenger's presentation.

**Joint Canada-U.S. Border Projects**
Section 404 permits U.S. border inspections agencies to enter into an agreement of cooperation with the government of Canada to conduct joint U.S.-Canada inspections projects. The AG and the Secretary of the Treasury are required to report annually to Congress on any joint inspections projects conducted under this section.

## Title V – Foreign Students and Exchange Visitors

**Foreign Student Monitoring System**
Section 501 requires the AG to establish an electronic means to monitor and verify:

1) the issuance of documentation of acceptance of a foreign student by an approved educational institution or exchange visitor program;

2) the transmittal of the acceptance documentation to appropriate consular officers at State;

3) the issuance of a visa to a foreign student (either an F or M nonimmigrant visa) or exchange visitor (a J nonimmigrant visa);

4) the admission into the United States of the foreign student or exchange visitor;

5) the notification to the approved educational institution or exchange visitor program that the foreign student or exchange visitor has entered the U.S.;

6) the registration and enrollment of the student or exchange visitor; and

7) any other relevant act by the student or exchange visitor, including changes of schools and termination of enrollment.

It requires educational institutions and exchange visitor programs to notify the INS within 30 days of the class registration deadline if an alien fails to enroll or begin classes. It requires the AG to collect additional information about F, J and M nonimmigrants, including the date and port of entry, the date of enrollment in an approved program, the degree program and/or field of study, and the date of and reason for termination of enrollment. It directs the AG to establish periodic reporting requirements for participating educational institutions. It requires applicants for F, M and certain J nonimmigrant visas to provide U.S. consular officers with their address in their



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home country, the names and addresses of their immediate relatives, the names of people in the home country who could verify information about the applicant, and any previous work history.

**Interim Foreign Student Monitoring Program**
Section 501 also creates a transitional program to monitor foreign students and exchange visitors. As of mid-September 2002 and until the above electronic system is fully implemented, no F, M or certain J nonimmigrant visas may be issued unless the State Department has received from an approved educational institution electronic evidence of the alien's acceptance at the institution and a consular officer has reviewed the applicant's visa record. The State Department is required to notify the INS each time it issues an F or M nonimmigrant visa. The INS then is required to notify the educational institution when an F or M nonimmigrant is admitted to the United States. Finally, the educational institutions are required to notify the INS within 30 days of the deadline for class registration if an alien fails to enroll or begin classes. This section also requires the AG, by mid-June 2002, to provide State with a list of all educational institutions that are authorized to receive F or M nonimmigrants.

**Institutional Compliance Review**
Section 502 requires the INS to conduct a review every two years of all the institutions approved to receive F, J or M nonimmigrants to determine whether they are in compliance with all record keeping and reporting requirements. State is required to conduct a similar review every two years of all entities designated to sponsor J nonimmigrant exchange visitors. The penalty for noncompliance is suspension for at least one year or termination, at the discretion of the INS Commissioner or the Secretary of State, of the institution or entity's authorization to receive F, J or M nonimmigrants.

## Title VI – Miscellaneous Provisions

**Border Crossing Cards**
Section 601 extends by one year, to September 30, 2002, the date by which the INS must be able to verify that the biometric identifier on each border crossing card presented matches the biometric characteristic of the holder of the card prior to admitting the holder into the United States.

**GAO Study**
Section 602 requires the General Accounting Office (GAO) to report to Congress by mid-May 2003 on the feasibility of requiring every nonimmigrant in the United States to register his or her current address and the name and address of his or her employer, if any, with the INS each year.

**International Data Sharing**
Section 603 directs the INS, State, and the Office of Homeland Security to report to Congress by mid-May 2003 on the possibilities for encouraging or requiring Canada, Mexico and visa-waiver countries to develop a network of interoperable electronic data systems that: 1) facilitates real-time access by the INS and State to international law enforcement and intelligence information needed to screen visa applicants and determine admissibility; 2) is interoperable with the Chimera system; and 3) is compatible with the identification technology standard referred to in Section 202 above.

**Exemption for Certain Aliens.** Section 604 states that nothing in this bill is intended to impose requirements that are inconsistent with NAFTA or to require additional documents for aliens granted documentary waivers by the AG and the Secretary of State. The practical effect of this provision is to exempt many Canadian visitors and certain other aliens from participation in the automated entry and exit system, since they will not be required to apply for machine-readable, biometric visas or other travel documents.

**Absconder Report.** Section 605 requires the AG to report to Congress by January 15 of each year the total number of aliens who failed to appear at a removal proceeding in the past year, after having been arrested, served a notice to appear, and released on their own recognizance. The report covering absconders in 2001 must be submitted to Congress by November 15, 2002.

Section 606 requires State to retain every application for a nonimmigrant visa, regardless of whether the application was approved or denied, for a period of seven years from the date of application.

**Backgrounders are intended to spur public debate and promote the development of better policy. The views expressed are not necessarily those of the Center for Immigration Studies or its funders. They are available on line free of charge at http://www.cis.org**



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